

NEWS FROM ED MARKEY

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MARKEY INVESTIGATES NUKE AGENCY'S USE OF SECRECY DESIGNATIONS

Markey calls for Inspector General Investigation of NRC Information Policy

Washington, DC: Representative Edward J. Markey (D-MA), a senior Member of the Homeland Security Committee and the House Energy and Commerce Committee, the panel which oversees the regulation of nuclear reactors, today released a letter sent to the Nuclear Regulatory Commission Inspector General (NRC IG) regarding an increasingly frequent and disturbing pattern of secrecy on the part of the Commission, including some regulatory proposals the Commission is currently considering to restrict public access to information that is not classified.

"I am concerned that the Commission's actions reflect a disturbing pattern of withholding important information from Members of Congress and their staffs, non-industry stakeholders, the press and members of the public, rather than a genuine effort to be protective of national security," said Rep. Markey. "While I am certainly supportive of efforts to ensure that information that could assist a terrorist in attacking a nuclear facility is properly secured, I am concerned that the Commission may be improperly restricting public access to specific documents that should be releasable without compromising security. This behavior must stop."

The Congressman requested that the NRC IG investigate the NRC's recent policy and actions regarding public access to information, including, but not limited to, the following incidents in which access to information was (or was proposed to be) denied or restricted:

- Rep. Markey learned that at a January 12, 2005 meeting at the NRC, Commission staff indicated that the agency is considering altering its definition of "proprietary information" to include material that is currently releasable to the public so it can be withheld in the future. This material would be shared within the industry, but not with the public. The purpose of a "proprietary information" designation is to protect the economic advantage that trade secret information provides a licensee or a vendor of that licensee, and therefore when the alleged "proprietary information" is shared with all licensees and all vendors of all licensees as NRC reportedly proposes to do, there are clearly no economic interests to protect.
- In February 2005, the Commission announced that it was planning to promulgate a rulemaking regarding the use of safeguards information, wherein NRC restrictions on the dissemination of sensitive information would be broadened to include emergency evacuation plans and engineering and safety analyses concerning the protection of nuclear materials.
- To date, the Commission is attempting to prevent the National Academies of Science (NAS) from publicly releasing an *unclassified* version of a Congressionally-mandated study on the safety and security concerns associated with spent nuclear fuel, citing security concerns. Rep. Markey has reviewed both a "safeguards" draft of the NAS report as well as NRC correspondence on the matter, and believes that the Commission's desire to prevent public access to the NAS report is based on the fact that it disagrees with the NAS' conclusions, not on any legitimate security concerns.
- In the fall of 2004 and winter of 2005, Rep. Markey received correspondence from the Commission that, along with attachments thereto, was marked 'For Official Use Only (FOUO).' In one instance, which has yet to be resolved, much of the FOUO information contained in the materials was designated as such because at the time the source documents were created, they were considered pre-decisional. Despite the expenditure of significant Commission staff attention to this matter and the fact that the decision in question was made months ago, the Commission has still not authorized the public release of most of these documents.

- The Commission barred access to portions of the materials on its website on more than one occasion in order to remove documents that posed a security concern, but has allowed its proceedings to go on even though some non-industry stakeholders were unable to obtain access to documents needed to participate.
- Rep. Markey has written the NRC regarding its decisions to hold secret meetings with the nuclear industry to discuss potential regulatory changes while it bars non-industry experts from obtaining access to information they need to prepare materials to oppose a licensee application. Evidently, non-industry experts are almost never granted 'need to know' even when they possess the necessary security clearances. Moreover, in the rare event that they are granted, the process takes an inordinately long time, and these individuals must continually demonstrate a 'need to know' for each document they request access to. In contrast, nuclear industry members are reportedly able to receive the 'need to know' by merely submitting their names and social security numbers to the Commission.

“There are legitimate cases when national security concerns require strict limitations on the release of information that could be useful for terrorists. I am concerned, however, that the NRC may simply be using secrecy as a pretext to prevent the public from accessing documents that do not pose security risks. The NRC’s practices in this area deserve a thorough investigation by the Inspector General, and I look forward to receiving the results of this important inquiry.”

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